HIGH COURT OF UTTARANCHAL AT NAINITAL

(Courts' order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32(2)(b)

Description of the case.

WPMS No. 761 of 2001
(Old No. 39906 of 1996)
M/s Spilints and Vneers Factory,
Vs.
Prescribed Authority,
& others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 7.8.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 761 (MS) OF 2001

(Old No. 39906 of 1996)

M/s Spilints and Vneers Factory,
Khadi and Village Industries Commission,
Fasiapur, Kashipur, District-Nainital
(Now District Udham Singh Nagar),
through its Deputy Director Incharge,
Regional Office, Khadi and Village,
Industries Commission, Peoples College, Campus,
Haldwani, District-Nainital .....Petitioner.

Versus

1. Prescribed Authority, Industrial Tribunal, Uttaranchal, Haldwani.
2. Smt. Asha Devi, W/o Sri C.K. Yadav, C/o Sri Hardari Lal Mehrotra, Mo.Ganj, Kashipur, District – Nainital (Now District Udham Singh Nagar). .....Respondents.

Dated: 07.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Anil Kumar Joshi, Advocate for the petitioner and Standing Counsel for the respondent no.1.

2. By the present writ petitions, the petitioner has prayed for a writ of certiorari quashing the award dated 21st August, 1995 passed by the respondent no.1.

3. Briefly stated on a reference made under section 4-K of the U.P. Industrial Act following question were referred:-

"क्या सेवायोजकों द्वारा अपने श्रमिक श्रीमती आशा देवी पत्ली श्री सी0के0 यादव की दिनांक 20–2–87 से सेवाऐं समाप्त किया जाना उचित तथा/अथवा वैधानिक है? यदि नहीं तो सम्बन्धित श्रमिक क्या लाभ/अनुतोष (रिलीफ) पाने की अधिकारी है तथा अन्य किस विवरण सहित ?''

4. According to the case of the respondent No.2 Smt. Asha Devi, her appointment was made as a daily wager and without complying the provisions of Section 6-N of the U.P. Industrial Disputes Act, her services have been terminated. Both the parties have filed their written statement and this fact has come on the record that no appointment letter was issued in favour of the daily wager and according to the employer he avsented herself from 14.02.1987.

5. Further the employer/petitioner has stated on oath and according to the statement of Sri Rajendra Prasad Pandey, since no order for appointment was given in favour of the daily wager, therefore, no order is required for termination of their services.

6. The Labour Court has passed the order that the daily wager has worked upto 19.02.1987 and since no complaint has been made against her, he shall be paid his wages till May, 1990 till the factory itself has been closed due to the fire.

7. Counsel for the petitioner has referred the judgment of ***Rajasthan State Ganganagar Sugar Mills Ltd. Vs. State of Rajasthan and another (2004) 8 SCC 161,*** where the Apex Court has held that it was for the claimant to held the evidence that he has in fact worked for 240 days in the year preceding his termination and mere statement cannot be sufficient to lead to the conclusion that in fact the claimant

had worked for 240 days in a year. The Apex Court has also relied upon the judgment of ***Range Forest Officer Vs. S.T. Hadimani (2002) 3 SCC 25.*** The muster roll has also not been produced and as such the Apex Court has observed as under:-

> *"4. In support of the appeal learned counsel for the appellant submitted that both the Labour Court and the High Court fell into error by placing burden on the employer to prove that the workman concerned has not worked for more than 240 days. The Labour Court failed to notice that even if the period for which the muster roll was not produced is reckoned, then also the requirement of 240 days' work during the twelve month preceding the alleged date of termination is not established.*
>
> *6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termina5tion. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed. Even if that period is taken into account with the period*

as days as claimed. Even if that period is taken into account with the period as stated in the affidavit filed by the employer, the requirement prima facie does not appear to be fulfilled. The following period of engagement which was accepted was 6 days in July 1991, 15-1/2 days in November, 1991, 15-1/2 days in January 1992, 24 days in February, 1992, 20-1/2 days in March 1992, 25 days in April 1992 25 days in May 1992, 7-1/2 days in June 1992 and 5-1/2 days in July 1992. The Labour Court demanded production of muster roll for the period of 17-6-1991 to 12-11-1992. It included this period of which the muster roll was not produced and came to the conclusion that the workman had worked for more than 240 days were referable.

7. In our view the Labour Court and the High Court have failed to consider the statutory requirement in their proper perspective. One of the stands taken by the employer was that the engagement was made keeping in view the temporary needs and it was seasonal in character. No definite finding was recorded by the Labour Court or the High Court in that regard.

8. We, therefore, remit the matter to the Labour Court to consider the evidence and come to a definite conclusion as to whether the workman had worked for 240 days during the period claimed. While considering the matter afresh, the aspect of need of engagement shall also be examined. If the engagement is found to be not for 240 days during the relevant period, then this aspect may not be considered. In case the Labour Court comes to a finding in the affirmative, its original order shall be maintained subject to consideration of the

seasonal need aspect. If its answer is in the negative the Labour court shall pass appropriate orders."

9. The Apex Court in ***Surendranagar District Panchayat and another v. Gangaben Lajibhai and others [2006 (110) FLR 548],*** has held as under:-

"10. The above position was again reiterated in a recent judgment in ONGC Ltd. and another v. Shyamal Chandra Bhowmik.

11. It was held in all these cases that the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer."

10. In view of thee above, a writ of certiorari is issued quashing the award dated_21st August, 1995.

11. In view of the aforesaid, the matter is remitted to the Labour Court, who shall also examine the case in the light of the recent judgments of the Apex Court *Rajasthan State Ganganagar Sugar Mills Ltd. Vs. State of Rajasthan and another* (2004 (8) SCC Page 161) and shall also examine this fact that the daily wager was on the seasonal basis for a particular work or as a daily wager on the basis of the exigency of the work.

12. Consequently, writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

07.08.2006
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